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EXAMINER

HEWITT II, CALVIN L

ART UNIT PAPER NUMBER

3621

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,287

Applicant(s)

BLY ET AL.

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-62 is/are rejected.
- 7) ☒ Claim(s) 43,44,52,53,61 and 62 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Status of Claims

1. Claims 36-62 have been examined.

Response to Arguments

2. Applicant is of the opinion that the combined prior art does not teach the claimed method, system and device. Specifically, Applicant asserts that Swor et al. do not disclose a wireless device, while Hoehn-Saric et al. do not teaching prompting a question for a respondent wherein the prompting occurs independent of a communication link between a wireless device and the wireless infrastructure. The Examiner respectfully disagrees. Swor et al. teach a portable unit such as a personal digital assistant (column 4, lines 45-67; column 5, lines 13-17) used for safety education where education comprises certification courses and tests (column 5, lines 33-44). To one of ordinary skill the portable digital assistant or any of the portable units are wireless as they contain modems and are for use in vehicles such as a mobile blood collection vehicle (column 4, lines 45-52). Hoehn-Saric et al. teach prompting a user for a question. Hoehn-Saric et al. teach authenticating a user, then if the user is authenticated sending the user test questions (column 8, lines 52-55). Hence, prior to authentication, the user does not see the test questions, therefore, the Examiner regards the appearance

of the test questions before the user as “prompting” as it moves the user to action (“prompt” is defined as “to move to action”, Webster’s Ninth New Collegiate Dictionary). Hoehn-Saric et al. also teach prompting a question for a user independent of a communication link between a remote testing device (figure 1, item 3) and data link that allows for communication between the central station and the remote device (figure 1, items 1 and 3; column 5, lines 19-40). Specifically, after authentication test questions are downloaded to the user at the remote testing device (column 8, lines 52-55) and once the test is completed the user uploads the completed exam back to the central station (column 9, lines 3-4). In order to take the test the remote device is not in continuous communication with central station (i.e. test source), therefore, even if the data link is down (figure 1, items 1 and 3), the user will still be prompted to answer the first question as the questions are stored at the remote device (column 8, lines 52-55; column 9, lines 3-4). To one of ordinary skill, the benefits of combining the two teachings are clear, as the implementation of user authentication (‘973, column 8, lines 52-55) to the Hoehn-Saric et al. system will ensure that the person being certified and the test taker are one and the same (‘297, column 5, lines 33-44). Regarding the type of questions asked, both Hoehn-Saric et al. (column 1, lines 5-11) and Swor et al. (column 5, lines 34-44) are directed to test taking therefore it would have been obvious to one of ordinary skill to use the teachings of Hoehn-

Saric et al. (column 8, lines 52-55) to administer any test independent of subject matter.

Claim 36 was also rejected under 112 2nd paragraph. It has been held that claims are to be precise, clear, correct, and unambiguous (In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)). Claim 36 is directed to utilizing a wireless communications system having a wireless infrastructure and a wireless device, however, claim 36 also recites prompting a question to a use independent of an active communication link between the wireless device and the wireless infrastructure. Therefore, it is not clear to one of ordinary skill whether or not the wireless communication system having a wireless infrastructure and a wireless device is actually utilized. Claim 39 was also rejected under 112 2nd paragraph. Applicant attempts to overcome the rejection by citing paragraphs from the Specification (paragraphs [0079] and [0096]), however these passages are silent regarding new questions and updating questions therefore, the Examiner maintains the rejection to claim 39. Claims 43, 44, 52, 53, 61, and 62 also remain rejected as it is unclear whether the step of "responding", for example, in claims 36, 46 and 55, occur if it is determined that the question does not need to be prompted.

Regarding the objection to claim 43, claim 36 requires a step of "prompting... a question". Claim 43, on the other hand recites "determining if the question is required to be prompted". This is conditional language (i.e.

determining if), hence if it has been determined that a question *is not* required to be prompted, according to the MPEP (MPEP 608.01(n)) claim 43 would not then further limit claim 36, as any actions that proceed from the question being prompted (e.g. "receiving a response to the question") would not occur. Claims 44, 52, 53, 61 and 62 also remain objected to.

The Applicant did not sufficiently challenge the Examiner's assertion of facts therefore the following is considered admitted prior art:

- updating of exam questions, for example by changing questions, in order to introduce new topics, emphasize or de-emphasize material, and the memorization of questions
- data cannot be communicated successfully from one device to another unless there is a connection between the two

Claim Objections

3. Claims 43, 44, 52, 53, 61, and 62 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 43 recites “determining if the question is required to be prompted”. However, claim 36, from which claim 43 depends, specifies prompting a question to a user. Hence, claim 43 does not further limit its parent claim as it makes optional a required limitation of claim 36. Claims 44, 52, 53, 61, and 62 are also objected to as it recites similar language.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 36-62 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 36 is directed to a method “utilizing a wireless communication system having a wireless infrastructure and a wireless device” however, the second claimed limitation is directed to performing a “prompting” without utilizing the wireless communication system as the action is performed “independent of an active communication link between the wireless infrastructure and the wireless device”. Claims 46 and 55 recite similar language. Therefore, it is not

clear to one of ordinary skill what is Applicant's claimed method and the scope of said method.

Claims 37-45, 47-54, and 56-62 are also rejected as they depend from claims 36, 46 and 55, respectively.

b. Claim 39 recites "receiving a new question by the wireless device from the wireless infrastructure and updating the questions". To one of ordinary skill, this is unclear as a "new" question replaces an "old" question one, while updating a question may result in only a slight modification.

c. Claim 43 recites "determining if the question is required to be prompted". However, claim 36, from which claim 43 depends, specifies prompting a question to a user. Therefore, according to the language of claim 36, it has already been determined that the operator has answered in the affirmative regarding "prompting". Claims 44, 52, 53, 61, and 62 are also rejected as each recites similar language to claim 43.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 36-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swor et al., U.S. Patent No. 6,148,297 in view of Hoehn-Saric et al., U.S. Patent No. 5,915,973.

As per claims 36, 43, 44, 46, 52, 53, 55, 61 and 62, Swor et al. teach a worker certification system comprising receiving a response and storing a response to a question (column 5, lines 33-45) utilizing a wireless communication system (i.e. wireless device and infrastructure) (column 4, lines 45-52). However, Swor et al. do not specifically disclose receiving an identifier from a test taker. Hoehn-Saric et al. teach a test taking system where the system receives an identifier from a test taker (column 8, lines 23-29). Hoehn-Saric also teach prompting a question independent of an active communication link as the questions are downloaded to and stored by the test taking device (column 8, lines 52-56). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Swor et al. and Hoehn-Saric et al. to validate the test taker in order to prevent fraud ('973, column 8, lines 25-55).

As per claim 37, 47 and 56, Swor et al. teach a wireless communication system (column 4, lines 45-52) for certifying workers comprising the storing of responses to questions (column 5, lines 33-45). In wireless communication, it is well known that data cannot be communicated successfully from one device to

another unless there is a connection between the two. Swor et al. discloses a scoring module for evaluating responses (column 5, lines 40-45). However, Swor et al. do not specifically recite the location of said module. Hoehn-Saric et al. teach forwarding completed questions to a central location (column/line 8/65-9/5). Therefore, it would have been obvious of one of ordinary skill to combine the teachings of Swor et al. and Hoehn-Saric et al. in order to reduce the prospects of test taker fraud by evaluating the responses at a remote location.

As per claim 38, Swor et al. teach certification (column 5, lines 35-45) and Hoehn-Saric et al. teach associating and storing identifiers with responses (column 9, lines 37-58). Regarding an identifier having "temporal relationship to other identifiers", this is non-functional descriptive material as the type of identifier does not alter how Applicant's process steps are to be performed to achieve the utility of the claimed invention (MPEP 2100-22). Nonetheless, it is well known to those of ordinary skill to use identifiers for establishing a temporal relationship between responses.

As per claim 39, 48, and 57, the Examiner takes Official Notice of the updating of exam questions, for example by changing questions, in order to introduce new topics, emphasize or de-emphasize material, and the memorization of questions.

As per claims 40-42, 45, 49-51, 54, 58-60, Swor et al. and Hoehn-Saric et al. disclose examinations (i.e. tests). Therefore, claim language that specifies the type of questions is non-functional descriptive material as the type of questions does not alter how Applicant's process steps are to be performed to achieve the utility of the claimed invention (MPEP 2100-22).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (571) 272-6712.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

c/o Technology Center 3600

Washington, D.C. 20231


or faxed to:

(571) 273-8300 (for formal communications intended for entry and after-final communications),

or:

(571) 273-6709 (for informal or draft communications, please label

"PROPOSED" or "DRAFT")


Calvin Loyd Hewitt II
Primary Examiner
March 24, 2006